

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

IN RE: Bair Hugger Forced Air Warming  
Products Liability Litigation

MDL No. 15-2666 (JNE/FLN)

**THIS DOCUMENT RELATES TO:**

Karen Potter (0:17-cv-04881-JNE-DTS)  
Renate Edwards (0:17-cv-04891- JNE-DTS)  
Todd Johnston (0:17-cv-05270- JNE-DTS)  
Willard Billings (0:17-cv-05277- JNE-DTS)  
Anne Bresnock (0:17-cv-05371- JNE-DTS)  
Bertha Swales (0:18-cv-00045- JNE-DTS)  
Jean Collins (18-cv-01175-JNE-DTS)  
Connie Winegar (18-cv-01283-JNE-DTS)

**PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS**

NOW COME Plaintiffs, in the above-captioned matters, identified in Defendants' Motion to Dismiss for Failure to Comply with Pretrial Order No. 14 [Dkt. 1538], and by and through the undersigned counsel submit this, Opposition to Defendants' Motion to Dismiss, along with the Declaration of Daniel C. Burke, Esq. and would respectively show the Court the following:

**Plaintiffs Bresnock, Potter, Swales**

This is Defendants' third attempt to dismiss claims brought by Plaintiffs Anne Bresnock, Karen Potter, and Bertha Swales [Dkts. 1387, 1463, 1538]. As per the Court's August 16, 2018 Order, Plaintiffs have submitted their amended-PFSs. However, upon submission, Defendants asserted that the core deficiencies were not cured. Thereafter, on September 4, 2018, Plaintiffs submitted another set of

amended-PFSs addressing the alleged core deficiencies. Despite Plaintiffs' diligent efforts and attempts to cure the alleged deficiencies, Defendants submitted their Motions on September 6, 2018 [Dkt. 1463] and October 4, 2018 [Dkt. 1538]. Plaintiffs believe that they have addressed all alleged core deficiencies in the amended-PFSs.

**Plaintiff Edwards**

This is Defendants' third attempt to dismiss claims brought by Plaintiff Renate Edwards [Dkts. 1387, 1463, 1538]. Plaintiff's PFS was served upon Defendants on March 21, 2018. Thereafter, Plaintiff submitted amended-PFSs on two separate occasions on August 7, 2018 and on September 11, 2018 to cure the alleged core deficiencies. Plaintiff believes that the recently served amended-PFS addressed all alleged core deficiencies.

**Plaintiff Johnston**

This is Defendants' third attempt to dismiss claims brought by Plaintiff Todd Johnston [Dkts. 1387, 1463, 1538]. Plaintiff's PFS was served upon Defendants on March 21, 2018. Thereafter, Plaintiff submitted amended-PFSs on two separate occasions on August 7, 2018 and on September 11, 2018 to cure the alleged core deficiencies. Plaintiff believes that the recently served amended-PFS addressed all alleged core deficiencies.

**Plaintiff Billings**

This is Defendants' third attempt to dismiss claims brought by Plaintiff Willard Billings [Dkts. 1387, 1463, 1538]. Plaintiff's PFS was served upon Defendants on March 21, 2018. Thereafter, Plaintiff submitted amended-PFSs on two separate occasions on August 7, 2018 and on September 11, 2018 to cure the alleged core deficiencies. Plaintiff believes that the recently served amended-PFS addressed all alleged core deficiencies.

**Plaintiff Jean Collins**

Plaintiff has yet to return the documents set forth by this Court's PTO 14. Plaintiff is aware of the obligations regarding completing and serving PFS, medical authorization, and supporting documents, pursuant to PTO 14. However, to be precise, the undersigned counsel is without any knowledge of circumstances that may preclude Plaintiff from responding to the counsel's contact attempts and efforts or completing the Court mandated PFS and medical authorization. The undersigned counsel attempted to reach Plaintiff numerous times including but not limited to the following:

- May 28, 2018 – Mailed PFS and medical authorization;
- July 3, 2018 – Left a voicemail;
- July 25, 2018 – Sent an email;
- August 10, 2018 – Left a voicemail;
- August 14, 2018 – Sent a letter re: PFS and her obligations set forth in PTO 14;
- August 28, 2018 – Sent an email;
- September 5, 2018 – Left a voicemail;
- September 11, 2018 – Searched for any alternative contact information;
- October 5, 2018 – Left a voicemail advising Plaintiff that Defendants moved to dismiss her case with prejudice for failure to comply with PTO 14.

**Plaintiff Connie Winegar**

Plaintiff has yet to return the documents set forth by this Court's PTO 14. Plaintiff is aware of the obligations regarding completing and serving PFS, medical authorization, and supporting documents, pursuant to PTO 14. However, to be precise,

the undersigned counsel is without any knowledge of circumstances that may preclude Plaintiff from responding to the counsel's contact attempts and efforts or completing the Court mandated PFS and medical authorization. The undersigned counsel attempted to reach Plaintiff numerous times including but not limited to the following:

- May 11, 2018 – Mailed PFS and medical authorization;
- June 3, 2018 – Left a voicemail;
- June 30, 2018 – Sent a letter re: PFS and her obligations set forth in PTO 14;
- July 3, 2018 – Left a voicemail and sent an email;
- July 25, 2018 – Left a voicemail;
- August 11, 2018 – Searched for any alternative contact information;
- August 30, 2018 – Left a voicemail and sent an email;
- September 5, 2018 – Sent an email;
- September 17, 2018 – Sent an email;
- October 5, 2018 – Left a voicemail advising Plaintiff that Defendants moved to dismiss her case with prejudice for failure to comply with PTO 14.

For the foregoing reasons, Plaintiffs respectfully request the Court to deny Defendant's Motion to Dismiss. Nevertheless, if the Court deems dismissal of Plaintiffs' matters to be proper, then they should be dismissed without prejudice granting an opportunity for Plaintiffs to reinstate their actions.

DATED: October 11, 2018

Respectfully submitted,

**BERNSTEIN LIEBHARD LLP**

By: /s/ Daniel C. Burke

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 11, 2018, I electronically transmitted the foregoing document to the Clerk of the United States District Court using the CM/ECF system for filing and service to all parties/counsel registered to receive copies in this case.

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